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Brown v. Vaughn E.D.Pa., 1992. Only the Westlaw citation is currently available.

United States District Court, E.D. Pennsylvania.

Tony BROWN

v.

Superintendent Donald VAUGHN, et al.

Civ. A. No. 91-2911.

March 31, 1992.

Tony Oshea Brown, pro se.

Barry N. Kramer, Office of Attorney General, Philadelphia, Pa., for defendants.

MEMORANDUM AND ORDER

BUCKWALTER, District Judge.

*1 All defendants have filed a motion for summary judgment to which no reply has been made by plaintiff. Rather than grant defendants' motion based upon plaintiff's failure to reply, I have reviewed the plaintiff's complaint in its entirety, as well as defendants' motion for summary judgment and the affidavits attached thereto.

Essentially, the facts of this case, as viewed following appropriate summary judgment standards, are as follows:

The plaintiff was an inmate in disciplinary custody when a defendant, not Vaughn, confiscated his crossword puzzle book as contraband. In addition, the defendant Harsomchuck punched him once in the chest and spit on him, and both Harsomchuck and Sunderland harassed him. By affidavit attached to the motion for summary judgment, Harsomchuck and Sunderland denied those allegations. In addition, the affidavit of defendant Vaughn is attached by which he states that he was not involved in and had no knowledge of the alleged confiscation of the plaintiff's puzzle book, or of any violence or verbal harassment. Moreover, the Department of Corrections Operations Manual attached in part to the affidavit restricts categories and numbers of non-law books an inmate in disciplinary custody may have. This restriction is based primarily on disciplinary grounds since inmates are confined in disciplinary custody because they have violated institutional rules and regulations. The affidavit goes on to state that

such punishment and limitations, correction officials believe, help to preserve internal order and discipline and to maintain institutional security.

As far as the seizure of the crossword puzzle book is concerned, regulations that affect a prisoner's receipt of publications are valid if reasonably related to legitimate penological interests. Thornburgh v. Abbott, 109 S.Ct. 1874, 1881 (1989). The decisions of prison officials relative to the rules and regulations needed to maintain order and security in a prison are due considerable deference.

With regard to the allegation that defendant Harsomchuck struck him on the chest and spit on him, I quote from an opinion of Judge Cahn of this court in which the factual situation was that the defendant had struck plaintiff once in the chest and threatened him. Judge Cahn said in his opinion:

"Every touching of an inmate by a prison official does not violate the constitution. Howell v. Cataldi, 464 F.2d 272, 282 (3d Cir.1972). 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights.' Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.) cert. denied, 414 U.S. 1033 (1973). To rise to the level of a constitutional violation, an inmate's assault claim must establish conduct more egregious than that adequate to support a common law tort. Williams v. Mussomelli, 722 F.2d 1130, 1133 (3d Cir.1983); see also Baker v. McCollan, 44 U.S. 137, 146 (1979)."

*2 The quote from Judge Cahn is reported in Fuller v. Bowers, No. 87-7316, 1989 U.S. Dist. Lexis 832 (E.D.Pa. Jan. 31, 1989).

In another case decided by Judge Broderick of this court (see Lenegan v. Althouse, No. 87-6820, 1988 U.S. Dist. Lexis 4959 (E.D.Pa. May 25, 1988)), the defendants were charged with the pulling of plaintiff's ear and hair and the smacking of the back of plaintiff's head. In his opinion, Judge Broderick stated:

While the extent of the injuries suffered by plaintiff is not the sole determinant of the constitutionality of the alleged touching, this court must determine whether the injury arises above the "de minimis level of imposition with which the constitution is not

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concerned.” [Ingraham v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 1414 \(1977\).](#)

As Judge Broderick opined concerning the conduct of the defendants in the case before him: “While clearly inappropriate conduct by prison guards, [it] does not rise to the level of a constitutional violation.” The same can be said of defendants' conduct in this case.

Finally, the conduct of defendant Vaughn is apparently based upon his position as supervisor, ultimately responsible for the operation of the prison. Of course, a state official cannot be held liable in a respondeat superior theory in actions brought under [42 U.S.C. § 1983](#) such as this one.

Based upon the foregoing, the following order is entered:

ORDER

AND NOW, this 30th day of March, 1992, the motion for summary judgment filed by all the defendants is GRANTED, and judgment is entered in favor of the defendants Donald Vaughn, Timothy Sunderland and David Harsomchuck and against the plaintiff Tony Brown. This file may be marked CLOSED.

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